

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:07-cr-185

v.

HON. JANET T. NEFF

ROBERT DIAZ,

Defendant.

MEMORANDUM OPINION AND ORDER

Defendant Robert Diaz has filed a motion for modification or reduction of sentence (Dkt 48) pursuant to 18 U.S.C. §3582(c)(2) based on the modification of the Drug Quantity Table with respect to cocaine base (crack cocaine).

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 750 of the United States Sentencing Guidelines modified U.S.S.G. § 2D1.1, the Drug Quantity Table with regard to cocaine base (crack cocaine), and U.S.S.G. § 2D2.1(b). These modifications were made retroactive effective November 1, 2011. U.S.S.G. § 1B1.10(c).

However, the defendant was sentenced to the mandatory minimum required by statute of 60 months in custody. Absent an appropriate motion filed by the Government, the Court has no authority to reduce a sentence below the mandatory minimum. Accordingly, the amendments are of no assistance to the defendant.

Therefore, IT IS HEREBY ORDERED that Defendant's motion for modification of sentence (Dkt 48) pursuant to 18 U.S.C. § 3582(c)(2) is DENIED.

IT IS FURTHER ORDERED that defendant's request for court appointed counsel is also DENIED.

DATED: January 26, 2012

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge